

Appeal of Boston Professional Hockey Association, Inc.

Appellant is a Massachusetts corporation which owns and **operates** the Boston Bruins hockey team as a member of the National Hockey League (NHL). The Bruins play their "home" games in **Bos** ton. Under NHL rules, each team is required to play the same number of games away from home against a particular **opponent** as it plays against that team at home. (**The only apparent** exception to this requirement occurs in the case of post-season play-off games,) During the income year in question, the Bruins played a total of 89 games: six of which were "**away**" games in California against the **California**-based NHL teams and six of which were "home" games in Boston against the same California teams.

Long-standing NHL rules provide that a visiting team is not entitled to share in the gate receipts from its away games. The home team retains all gate receipts. (**The only** exception to this rule occurs, once again, in the play-off situation, where the gate receipts from "**odd**" play-off games are split between the teams in some unidentified manner.) Thus, appellant, received no part of the gate receipts when **it** played in California, but it kept all of the receipts from its games in Boston with the California teams.

This method of treating gate receipts is similar to the approach taken by professional basketball, but it differs from the method used by some other sports, such as football and baseball. For example, a visiting professional football team receives either a flat fee or 40 percent of the gate receipts, while the home team keeps 60 percent.

In addition to the revenues from its gate receipts, appellant also received other income from the disposition of player contracts and from the sale of rights to broadcast Bruins' games over radio and television. The revenues from the broadcasting rights came partially from local radio and television broadcasts and partially from the **NHL's** national television contract. As far as we can tell, the various broadcasting contracts involved the right to broadcast all of the Bruins' games, both home and away.

Respondent determined that appellant's activities in California were sufficient to subject it to the franchise tax, and it instructed appellant to file a return for the year in question. When appellant refused, respondent issued a deficiency assessment and a penalty for failure to file a timely return. In computing the deficiency, respondent decided not to use the standard UDITPA apportionment formula since it would apportion no income to California even though appellant had engaged in substantial business activities in this state.

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(See Rev. & Tax. Code, §§ 25120-25139.) Respondent determined, instead, to use a special formula under the authority of Revenue and Taxation Code section 25137, which permits deviations from **UDITPA's** standard provisions if they do not fairly represent the extent of the taxpayer's business activity in this state. This special formula apportioned appellant's income on the basis of the average of three factors -- property, payroll, and gross receipts (sales) -- and is described below in more detail.

Sales Factor

1. Numerator.

(a) Gate receipts -- 40 percent of the gross gate receipts generated from appellant's home games in Boston against California teams, as a measure of appellant's revenue-generating business activity in California.

(b) Radio and television receipts -- A portion of the income derived from such broadcasts based on the ratio of games played in California to total games played, multiplied by total broadcast receipts.

(c) Gains from sales of player contracts -- A portion of this income based on the average of the property and payroll factors, multiplied by the total gains from such sales.

2. Denominator.

(a) Gate receipts -- (1) 60 percent of the gross gate receipts from all of appellant's home games; plus (2) 40 percent of the gross gate receipts from all of **appellant's** home games as a measure of appellant's revenue-generating business activity in states other than Massachusetts.

(b) Radio and television receipts -- All such receipts.

(c) Gains from sales of player contracts -- 'All such gains.

Payroll Factor

Respondent computed the numerator by multiplying total wages by a ratio of the working days appellant's players, trainers, and coaches spent in California to their total working days everywhere. The denominator was composed of the total wages paid to all of appellant's employees.

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Property Factor

Since appellant did not own or rent any real or tangible personal property in California, the property' factor was zero.

With the exception of an issue concerning the gains from appellant's sales of player contracts, the questions and arguments presented in this case are virtually identical to those in the Appeal of Milwaukee Professional Sports and Services, Inc., also decided today. In accordance with our opinion in that case, and for the reasons expressed therein, respondent's action in this appeal will be modified with respect to the gate receipts and sustained on all the other common issues. Our only remaining task, therefore, is to dispose of the player **contract** question. For purposes of clarity, the following discussion should be read in conjunction with our analysis of the radio and television receipts issue in the Appeal of Milwaukee Professional Sports and Services, Inc., supra.

During the appeal year, appellant realized a minor amount of income from the sale of some player contracts. Respondent determined, for sales factor purposes, that a portion of these gains was properly includible in the numerator. The includible **amount was** computed by multiplying the total gains from these sales by the average of the payroll and property **factors**. As it did in the case of the broadcasting receipts, **appellant** argues in the alternative that these gains are non-business income **excludible** from the sales factor, and that respondent's manner of reflecting them in the sales factor is unreasonable.

There is no question in our minds that the gains from player contract sales are business income. In hockey, as in other professional sports, it **is a** common occurrence for a player to be sold or traded from one team to another. Such transactions clearly occur in the regular course of a team's trade or business, and the income from them therefore falls within **section 25120's** definition of business income.

Under **UDITPA's** standard sales factor, it appears that section 25136 would attribute these sales entirely to Massachusetts, where appellant presumably made and executed the personnel decisions that gave rise to these receipts. While Massachusetts thus appears to have a logical **connection** with the player transactions in question, there is nothing in the **record which** suggests a comparable California connection. Such a connection is not supplied, in our view, by the circumstance that appellant conducts some of its business in this

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state. Lacking any rational basis for connecting California with appellant's player transactions, we are compelled to conclude that section 25137 does not authorize respondent to include a portion of the player contract receipts in the sales factor numerator. In passing, it should be noted that even if this conclusion had been otherwise, we would have grave difficulties in finding a reasonable basis for sustaining respondent's use of the average of **the payroll** and property factors.

ORDER

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